

**GUILTY PLEA COLLOQUY – UNLAWFUL REENTRY CASES**

**DATE**

No. **CR**

**United States v.**

AUSA:

Defendant's Lawyer:

Interpreter: **None**

**[THE JUDGE WILL HAVE ANY INTERPRETER SWORN]**

**[THE JUDGE WILL ANNOUNCE THE CASE]**

You are [*Mr./Ms. defendant*]? I am [*name of magistrate judge*], a United States Magistrate Judge. On [*date of Indictment/Information*], [*the judge will say one of the following:*] (the United States Grand Jury for the Northern District of Iowa returned an Indictment against you) (*or*) (the United States Attorney filed an Information against you). You previously appeared in court and pled not guilty to the Indictment/Information. I have been advised that you now wish to change your plea and enter a plea of guilty to the Indictment/Information.

[*Mr./Ms. defense counsel*], is that your understanding?

**[IF APPROPRIATE, THE JUDGE WILL REVIEW ANY CONSENT BY THE DEFENDANT TO ALLOW THE GOVERNMENT TO PROSECUTE THIS CASE BY INFORMATION INSTEAD OF INDICTMENT]**

**1. CONSENT TO PLEAD GUILTY BEFORE MAGISTRATE JUDGE**

[*Mr./Ms. defendant*], this case is assigned to a district court judge. I am a magistrate judge. You have the right under the United States Constitution to have a district court judge preside over any guilty plea hearing. I can preside over your guilty plea hearing, but only with your voluntary consent. You have signed a form stating that you consent to have me preside over your plea hearing. Is that what you would like me to do?

[*Mr./Ms. defense counsel*], do you believe your client's consent is knowing and voluntary?

Very well, I will accept the defendant's consent and go ahead with the guilty plea hearing.

## 2. THE OATH

[*Mr./Ms. defendant*], I will be asking you a number of questions, and you will have to be under oath when you answer them. Would you please raise your right hand so I can place you under oath?

### [THE JUDGE WILL PLACE THE DEFENDANT UNDER OATH]

You may put your hand down. [*Mr./Ms. defendant*], you are now under oath. You should tell the truth because if you do not, you could be prosecuted by the Government for perjury or for making a false statement. In any such prosecution, the Government could use against you any statements you make here under oath.

You have pled not guilty to this charge. Even though you have come here today to change your plea, you do not have to plead guilty. If at any time during this hearing you change your mind and decide you don't want to plead guilty, just tell me, and I will recess the hearing and schedule your case for trial.

Do you understand?

## 3. INSURING MENTAL CAPACITY

I now have to ask you some personal questions to make sure you don't have any mental or physical problems that would make it hard for you to understand what we're going to talk about today.

Would you state your full name? How old are you? Are you a U.S. citizen? Have you ever been a U.S. Citizen? Of what country are you a citizen? [*The judge will ask the following questions in appropriate cases:*] How far did you go in school? Where did you go to school?

What is your native language? [*The judge will ask the following question in appropriate cases:* Do you understand the English Language? Do you understand what the interpreter is saying to you?]

If you have problems understanding anything that comes up during this hearing, will you let me know so I can better explain it to you?

Have you ever suffered from or had any problems with **alcohol or drug abuse**? [*If "yes," then the judge will say the following:*] The purpose of my question is to find out whether your abuse of drugs and/or alcohol in the past would make it hard for you to understand what's happening at this hearing today. With that in mind, would you generally describe for me your history of using drugs and/or alcohol? [*After the defendant answers, the judge will say the following:*] Do you think your past abuse of drugs and/or alcohol abuse might affect your ability to understand what's happening at this hearing today?

Have you ever suffered from depression, anxiety, or any other **mental illness**? [*If "yes," then the judge will say the following:*] The purpose of my question is to find out whether any

mental illness would make it hard for you to understand what's happening at this hearing today. With that in mind, would you generally describe your mental health history to me? *[After the defendant answers, the judge will say the following:]* Do you think your mental health problems (*in the past*) might affect your ability to understand what's happening at this hearing today?

Here today, are you under the influence of **alcohol, drugs, or medication**? Have you recently used any **legal or illegal drugs** or any **prescription or non-prescription medication**? Has any medication been prescribed for you that you are not taking?

*[Other than what we have talked about,]* Do you know of anything that might affect your ability to understand what's happening at this hearing or your ability to make good judgments today?

*[Mr./Ms. defense counsel]*, do you think your client is competent to proceed with a plea hearing today?

**I AGREE, AND SO FIND.**

**4. RIGHT TO A LAWYER**

*[Mr./Ms. defendant]*, you have the right to a lawyer to help and represent you during every stage of this case. If at any time you can't afford a lawyer, you're entitled to free one.

*[The judge will ask the following question only if the defendant is not represented by the Federal Public Defender.]* *[Mr./Ms. defense counsel]*, are you retained or appointed?

*[Mr./Ms. defendant]*, are you satisfied with the representation you have received from *[Mr./Ms. defense counsel]*?

**5. INDICTMENT/INFORMATION**

*[Mr./Ms. defendant]*, in the Indictment/Information in this case, the (Grand Jury)/(United States Attorney) charges that you illegally reentered the United States after you were deported.

Do you understand what the (Grand Jury)/(United States Attorney) is saying you did wrong?

Have you talked with *[Mr./Ms. defense counsel]* about the evidence in your case?

Have you had the chance to talk with *[Mr./Ms. defense counsel]* as much as you want about this charge?

*[Mr./Ms. defense counsel]*, do you think your client understands the charge against him/her?

6. **PENALTIES**

[*Mr./Ms. defendant*], under the statutes that apply to the charge against you, the district court judge could send you to prison for up to \_\_\_\_\_ years, impose a fine of up to \$\_\_\_\_\_, and sentence you to a term of supervised release of up to \_\_\_\_\_ years. The judge also will impose, and you will have to pay, a special assessment of \$100.

Do you understand the statutory penalties?

You should understand you will be in custody for all of any [*jail or*] prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for “good time” of up to about 15% of your sentence[, *but only if your sentence is longer than one year*]. [*The judge will give examples, if appropriate.*] You should understand you never will see a parole board or be paroled out of prison before completing your sentence; parole has been abolished in federal court.

If you plead guilty, you likely would be deported immediately after serving any jail or prison sentence you are given on this charge. After that, it is unlikely you would ever be permitted to reenter the United States legally. If you are deported, then while you are on supervised release you will not be under the supervision of a probation officer, but it would be a violation of your supervised release to reenter the United States during your period of supervised release. If you reenter the United States while you are on supervised release, the district court judge likely would revoke your supervised release, and require you to serve in prison all or part of the time you otherwise would have been on supervised release. That prison term would be in addition to any sentence you would receive if you were convicted on an another illegal reentry charge.

Do you have any questions about good time or supervised release?

7. **RIGHT TO A JURY TRIAL:**

[*Mr./Ms. defendant*], if you plead guilty, you will be giving up your one chance for a jury trial on this charge. Before I can let you do that, I must explain your trial rights to you so you’ll know what you’ll be giving up by pleading guilty.

You have the right to a speedy, public jury trial before a jury of 12 people selected from a cross-section of this community. You and [*Mr./Ms. defense counsel*] would help choose the people who would serve on your jury.

Your jurors would promise under oath to try your case fairly and justly, based only on what is submitted into evidence at trial and the instructions given to them by the district court judge. They would be told by the judge that you are presumed innocent, and that the presumption of innocence remains with you unless and until, at the end of your trial, the prosecution has convinced the jury

of your guilt beyond a reasonable doubt. Any verdict by the jury would have to be unanimous, which means all 12 jurors would have to agree on the verdict.

Do you understand you would be presumed innocent at your trial, and could not be convicted by the jury unless the prosecution proved your guilt beyond a reasonable doubt?

Do you understand any verdict in your trial would have to be unanimous?

The prosecution would have to call its witnesses to testify under oath here in court. You would be able to see and hear their testimony, and they would be able to see you while they are testifying. [Mr./Ms. *defense counsel*] could confront the prosecution's witnesses, and cross-examine them.

You would not have to put on a defense at your trial, but if you wanted to, you could present any relevant evidence to the jury. You could make witnesses come to court by having subpoenas served on them. These subpoenas could be served anywhere in the United States, and would require your witnesses to come to this court for your trial. If you couldn't afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, I would make the Government pay those costs and fees.

You would not have to testify or say anything at your trial. If you decided not to testify at trial, [Mr./Ms. *prosecutor*] would not say anything about it to the jury. In fact, the judge would, if you asked him/her to, tell the jurors that you have a constitutional right not to testify. (S)he also would tell them that if you choose not to testify, they must not hold it against you. Of course, you could testify at your trial, if you wanted to, but you wouldn't have to.

You would have the right to appeal, and the right to a free lawyer to help you with your appeal if you couldn't afford one.

Do you understand the rights I've just described to you?

## 8. **WAIVER OF RIGHT TO JURY TRIAL BY PLEADING GUILTY**

If you plead guilty, you will be giving up your right to a jury trial. You also will be giving up the right to file pretrial motions, including motions for discovery, motions challenging the Indictment/Information, and motions to suppress evidence.

If you plead guilty, you will have no trial. You will be adjudged guilty based on your plea, just as if a jury had returned a guilty verdict against you.

Do you understand that if you plead guilty, the next hearing in this case will be your sentencing hearing, and it likely will be the last hearing in your case?

Do you understand that if you plead guilty, you won't have a jury trial or any other trial?

## 9. U.S. SENTENCING GUIDELINES AND SENTENCING HEARING

If you plead guilty here today, I will order a **presentence investigation report**, which will be prepared by a probation officer. [*The judge may introduce the probation officer if (s)he is present in the courtroom.*] The probation officer will interview you within the next few days, and then will conduct a thorough investigation of your background, which will include an investigation of the facts of this case. (S)he then will prepare a draft presentence investigation report, and will send a copy of the draft report to [*Mr./Ms. prosecutor*] and [*Mr./Ms. defense counsel*]. You should go over the report carefully. [*If you can't read the report in English, you should have it read to you in (Spanish) (your native language).*] Be sure to point out to [*Mr./Ms. defense counsel*] any mistakes or omissions in the report so (s)he can let the probation officer know about them. The probation officer will be happy to correct or amend the report if warranted. The report will be the most important document at the sentencing hearing, so you will want it to be as accurate as possible.

After the report has been finalized, it will be sent to the district court judge, and copies of the report will be sent to [*Mr./Ms. prosecutor*] and [*Mr./Ms. defense counsel*]. Then you will have a sentencing hearing.

At the sentencing hearing, you and [*Mr./Ms. prosecutor*] can present witnesses and exhibits on any sentencing issue. Then, you will be given a chance to talk to the judge directly and to tell him/her anything you want.

At the end of the hearing, the judge will determine the appropriate sentencing range for you under the U.S. Sentencing Guidelines, which are issued by the United States Sentencing Commission. (S)he then will tell you what your sentence will be, which in most cases **must** be within the range established by the Guidelines. The judge has the power in certain **special** circumstances to sentence you either above or below the Guideline range. However, in this case, there is almost no chance the judge would sentence you below the bottom of the range, so you should not expect that to happen.

In most cases, whatever happens at the sentencing hearing, you will not be allowed to withdraw your guilty plea, even if you don't like the sentence the judge gives you. However, both you and [*Mr./Ms. prosecutor*] may have the right to appeal from what happens at the sentencing hearing.

Do you understand how your sentencing hearing would be conducted?

[*Mr./Ms. defendant*], have you talked with [*Mr./Ms. defense counsel*] about how the Guidelines might work in your case?

Do you think you generally understand what (s)he has told you about the Guidelines?

[*The judge will ask defense counsel, and then the prosecutor, for any preliminary calculations as to the Guideline range, and then will say the following:*]

[*Mr./Ms. defendant*], you should understand that the district court judge has the responsibility for determining your actual Guideline sentence, and will do so at your sentencing hearing.

His/her determinations may be different from the predictions of the lawyers. These predictions are not binding on him/her.

Do you understand the sentence the district court judge gives you may be different from what you're hoping for or what [*Mr./Ms. defense counsel*] has predicted?

10. **ELEMENTS AND FACTUAL BASIS**

[*Mr./Ms. defendant*], before I can let you plead guilty, I must make sure you know what the prosecution would have to prove at trial to convict you on this charge, and I also have to determine that the evidence in this case supports a finding that you are, in fact, guilty of the charge.

[*The judge will discuss the elements and the required factual basis.*]

[*Mr./Ms. prosecutor*], did I correctly explain the elements of the charge to the defendant? Do you believe I have established an adequate factual basis for a guilty plea to the charge?

[*Mr./Ms. defense counsel*], do you think your client understands the elements of the charge against him/her? Have you had full access to the Government's discovery materials? Do you believe they support a factual basis for a guilty plea to the charge? Do you know of any possible defenses to the charge that you haven't discussed with your client?

11. **ENSURING VOLUNTARINESS OF PLEA**

[*Mr./Ms. defendant*], has anyone made any promises to you to get you to plead guilty?

Has anyone forced or pressured you to plead guilty?

Has anyone threatened you to get you to plead guilty?

[*Mr./Ms. defense counsel*], do you believe a guilty plea by your client to the charge against him/her would be voluntary?

12. [*The judge will ask the lawyers the following question:*] **ARE THERE ANY FURTHER QUESTIONS YOU THINK I SHOULD ASK, [*Mr./Ms. defense counsel*]? [*Mr./Ms. prosecutor*]?**

13. [*Mr./Ms. defendant*], **DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING? DO YOU STILL WANT TO PLEAD GUILTY?**

14. [*Mr./Ms. defendant*], **FORMALLY AND FOR THE RECORD**, how do you plead to the Indictment/Information – guilty or not guilty?

**The record should reflect that the defendant has pled guilty to the one Count of the Indictment/Information.**

15. **I find that:**

The defendant is competent;

(S)he fully understands the charge against him/her;

There is a factual basis for his/her plea;

(S)he knows the maximum punishment that could be imposed on the charge; and

(S)he knows his/her jury rights and has voluntarily waived those rights.

**I further find that:**

The defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises.

Therefore, I find the defendant should be adjudged guilty based on his/her plea of guilty.

16. **Report and Recommendation**

I am now signing and will file my Report and Recommendation, recommending that the defendant's guilty plea be accepted. I also am serving copies of the Report and Recommendation on the lawyers for the parties. [**THE JUDGE WILL PROVIDE LAWYERS WITH COPY OF REPORT AND RECOMMENDATION.**] The parties are advised they have 10 days from today's date, not counting weekends and holidays, to file objections to the Report and Recommendation. If a party fails to make a timely objection, the party will have waived the right to make the objection. After reviewing any objections, the district court judge may accept the Report and Recommendation, and the defendant's plea of guilty, by simply entering a written order doing so. [**The judge will tell the defendant about any scheduled sentencing date – e.g., “Judge Bennett has scheduled a sentencing hearing in this case for (date and time).”**]

17. I hereby **ORDER A PRESENTENCE INVESTIGATION REPORT**. The parties should pay careful attention to the deadlines relating to the preparation of the report.

18. [*The judge will ask the lawyers the following question:*] **IS THERE ANYTHING FURTHER THAT NEEDS TO BE DONE TO CONCLUDE THIS HEARING** [*Mr./Ms. defense counsel*]? [*Mr./Ms. prosecutor*]?

19. [*The judge will address the defendant, if appropriate.*]

**We are in recess.**